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ABSTRACT

This issue of "Focus on Law Studies" "contains a special emphasis on teaching about law and the family", in the form of the following three articles: "Teaching Family Law: Growing Pains and All" (Susan Frelich Appleton); "The Family Goes to Court: Including Law in a Sociological Perspective on the Family" (Mary Ann Lamanna); and Michael Grossberg's "Bringing the Legal History of the Family into the Classroom." There is an introduction to the topic and a 35-item combined bibliography of teaching family law. (SG)

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Teaching about Family Law

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on Law Studies

Teaching about law in the liberal arts

SPRING 1992
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American Bar Association

Teaching about Law and the Family in Liberal Arts and Law School Settings

by John Paul Ryan

[*Editor's Introduction: This issue contains a special emphasis on teaching about law and the family. From time to time,* Focus *will devote large portions of an issue to in-depth treatment of subjects. We welcome our readers' suggestions of topics, as well as offers to serve as guest editors.*]

Family law is a "hot" topic. Changes in technology and medicine, in the cultural relationships between women and men, and in the structure and composition of the family itself, have resulted in new tensions that, in an increasingly rights-conscious and privacy-sensitive society, seek some sort of resolution through law, frequently in the courtroom. Three articles that follow detail some of the changing configurations of law and the family, as well as how this intrinsically interesting topic can, and should, be taught in the classroom, both to undergraduate students in the social sciences and humanities and to professional law school students.

Beginning on page 4, Susan Frelich Appleton of the Washington University (St. Louis) School of Law addresses the teaching of family law in a law school setting. This is an appropriate point of departure, since the subject's academic roots lie in the law school. Professor Appleton describes how the modern family law course has evolved from its predecessor, "domestic relations," which focused mostly on divorce, child custody and the like. She also discusses a range of historical and social science perspectives that are now not merely relevant but essential to a successful, contemporary teaching of the subject.

More recently, family law has become a subject of *coherent focus* in undergraduate courses, after having performed a string of cameo appearances in constitutional law courses (e.g., in cases on abortion and privacy). Sociologist Mary Ann Lamanna of the University of Nebraska at Omaha describes how a public policy focus on the family, informed by case law, statutes, legislative histories, and administrative regulation, can be a challenging course for students in sociology and related policy disciplines, such as criminal justice, social work, and nursing. Historian Michael Grossberg of Case Western Reserve University then illustrates how a legal history of the family can shed light on a myriad of cultural and political questions, including the comparative abilities of lay citizens and professionals to effect social change, gender and power relationships in society, and the tensions between localism and national uniformity. Such perspectives, Grossberg suggests, can easily be integrated into both general, and more specialized, history courses.

A combined bibliography, to which all the authors have contributed, appears on page 7. These diverse sources offer an excellent introduction to a topic that can enrich courses in many disciplines.

ABA Introduces Teaching Resource Bulletins

We have recently initiated "Teaching Resource Bulletins," a series that provides interpretive essays, teaching strategies, and bibliographies on selected law-related topics. Three Bulletins (4-8 pages each) will be published annually.

White Collar Crime and the Law: An Annotated Bibliography ($2), by sociologist Robert Tillman, contains brief descriptions of books, articles, and videos, graded for ease of student use, on white collar crime and such specialized topics as financial fraud, workplace safety, and computer crimes.

Teaching Ethics in Business Law Courses ($4), by business lawyer Jeffrey Nesteruk and political scientist David Risser, includes an essay, notes, and a bibliography. Nesteruk and Risser show how to use organization theory and court cases to engage students in discussions.

Environmental Law in the Undergraduate Liberal Arts Curriculum: Strategies and Recommendations ($4), by sociologist William Clements, addresses theoretical concerns and such substantive topics as pollution, hazardous waste, and accidents. Sources are referenced throughout.

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A Word Is Just a Word: Bringing Classical Hollywood Films into Legal Studies Classes

by Norman Rosenberg

A picture is worth a thousand words

The right word is worth a thousand pictures

The right moving picture sequence makes any more words irrelevant

As people probably more comfortable with words than pictures, still or moving, teachers of law may incline toward the second of these epigrammatic positions. I want, however, to invoke a modified version of the third proposition in arguing that undergraduate legal education might sample a rich and (with VCRs) readily-accessible trove of visual texts, Hollywood's motion pictures. Moreover, I believe that moving pictures do not really make discussions about legal issues irrelevant; rather, in trying to reach students raised on *Sesame Street*, *The Simpsons*, and *Nick at Nite*, framing legal questions against the backdrop of visual sources seems an appropriate pedagogical move.

More important, filmic sources can enrich classroom teaching by encouraging students to interrogate the wider legal culture. What kinds of discourses about law circulate within popular culture? Drawing upon literary and cinematic theory, students might also ask how mass, commercial culture helped to structure such discourses. In what ways might cinematic representations encourage citizens to see legal institutions as obstacles as well as aids to justice?

In order to provide a concrete example of how films and even cinematic theory might help to address these kinds of questions, I will look briefly at one of Hollywood's best-known films, *Casablanca* (1942). I choose *Casablanca* because of its familiarity and because my own historical training inclines me toward Hollywood's "classical" period, from 1930 to about 1965. In addition, *Casablanca* suggests that instructors can draw from a variety of Hollywood films, not simply from those, such as *Twelve Angry Men* (1957), featuring trial scenes.

Casablanca – with its famous love triangle involving Rick (Humphrey Bogart), Ilsa (Ingrid Bergman), and her husband Victor Lazlo (Paul Henreid) – may initially seem an unlikely legal text; on many levels, though, the film offers different, conflicting discourses about legal rules and obligations. And by teasing out legal issues in a film that appears to have little to do with law, a defamiliarizing of the familiar may broaden ideas about "law" and encourage explorations of other "non-legal" sources.

Viewed as a film about law, *Casablanca* dramatizes how overlapping legal discourses – and legally-sanctioned duties – can coincide, and conflict, in the same place and time. The film, in this sense, can be read as a text about "legal pluralism." For example, official law in World War II Casablanca, a legally neutral territory, rests upon a Vichy French Prefect, Captain Renault (Claude Rains, who habitually manipulates formal rules in order to satisfy his own private desires and the political agenda of Nazi Germany's military representative, Major Strasser [Conrad Veidt]). Strasser, it might be argued, effectively dominates Casablanca's "law in action," at least when international affairs are involved. Contemptuous of both Renault and Strasser – though he does alter the laws of chance so that Renault can win at roulette, the American saloon-keeper Rick (Bogart) resembles the classic "outlaw hero." He disdains the entire legal environment and operates, to the extent Renault and Strasser allow, according to his own, cowboyesque, higher-law code. Though expediently genuflecting toward both Casablanca's formal and informal legal systems, Rick feels no *obligation* to obey either of them.

Victor Lazlo, the freedom-fighting fugitive from Nazi (in)justice, represents a view of law that initially seems very different than Rick's. Thus, it is not Rick, the quintessential American, but Lazlo, coded by the film as the archetypal European social democrat, who espouses the rule-of-law principle; Lazlo insists that Casablanca's legal neutrality requires the Strasser-Renault regime to respect his free status. "You won't dare to interfere with me here," he warns Strasser. (Students might profitably discuss why, apart from the film's narrative needs, Strasser does not simply eliminate Lazlo but, instead, defers

on Law Studies

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to the rule-of-law and tolerates his presence in Casablanca).

Following the film scholar Robert Ray, *Casablanca* can be read here as a "disguised western," a North-African version of sagebrush classics such as *The Man Who Shot Liberty Valence* (1963), another film well-suited to legal studies classes. Borrowing the western's formula of a legal system unable to guarantee justice or public safety, *Casablanca* allows Rick to play the role that John Wayne carried in films like *Liberty Valence*. In a wonderful homage to the western gunfight, Rick outdraws Major Strasser, and this extra-legal violence both enables Lazlo to escape (with Ilsa), thus resuming the anti-Nazi activities that the film posits as essential to an Allied victory, and wins over the vacillating Renault to Rick's higher-law stance.

Though persuasive at one level, the disguised Western scenario ignores deeper layers of legal discourse in *Casablanca*. Consider for example, the film's representation of written law, "letters of transit" stolen from murdered German couriers. These documents have been sanctified by the Free French government of General DeGaulle and, within the film's logic at least, will magically permit anyone, even the fugitive Lazlo, to leave Casablanca: no legal authority, film viewers are to believe, can challenge these letters. Arguably, then, they constitute a kind of fundamental, written law that stimulates social violence rather than order: people are killed, and willing to kill, in order to invoke their ultimate power.

Significantly, Rick and Lazlo, encoded to represent very different views of law and authority in the disguised western interpretation, take remarkably similar stances toward these letters and, ultimately, the rule of law. Both the "higher-law" Rick and the "rule-of-law" Lazlo seek the letters for their own purposes; both defer to the letters' formal status without losing sight of their instrumental value. When Rick finally decides to use the blank letters on behalf of Lazlo and Ilsa's escape from Casablanca, he asks Renault, whom he is holding at gunpoint, to make it "official" by inserting the couple's names.

Similarly, Lazlo himself displays an ambiguous stance toward the rule-of-law. He is perfectly willing to bargain for the letters of transit, knowing they have been stolen. Certainly, he does not hesitate to leave Casablanca after Rick illegally shoots Ilsa's and his way out of town. And he does not even protest, as does naive lawyer Ransom Stoddard (James Stewart) in *Liberty Valence*, cowboy-style gunplay as a violation, however necessary, of legal form. Finally, and perhaps most significant, Lazlo never seems really wedded to the rule-of-law principles that he so passionately invokes against Renault and Strasser; rather, Lazlo invokes legal formalism as a performative act, insisting that the authorities must respect the legal neutrality of Casablanca while, simultaneously, scheming to escape Strasser's oversight by whatever means necessary.

Analysis of a movie such as *Casablanca* can easily be linked, in a number of ways, to legal scholarship. Pierre Schlag's suggestive essay on "normative" legal thought, for instance, uses *LA Law* to highlight the "performative," socially-constructed nature of legal practices. Classical Hollywood texts, as I have tried to suggest with *Casablanca*, may be used in much the same way; most obviously, none of the principals in *Casablanca*, including the cerebral Lazlo, enjoy the luxury of only *thinking* about law. All the film's wonderful characters, superbly played by Warner Brother's very best contract actors, must "perform" not only "law" but must also orchestrate their other "performances" within a society that is socially-constructed by legal forms and by the legal performances of others. (One might consult here, Sanford Levinson and J.M. Balkin's recent piece comparing "performances" in law and music, an analysis that has important implications for the relevance of other "non-legal" sources, including film).

Casablanca, of course, remains an open text: other readings – modifying, contradicting, and recasting the ones I've suggested here – are readily available. Is it possible, for example, to read *Casablanca* so that Ilsa, a passive bystander in most interpretations, gains a legal voice? Rather than propounding any definitive reading of a single film, I have tried to suggest some of the multidisciplinary strategies available for law and film studies. Many other films from Hollywood's classical era contain equally powerful representations about law. John Huston's *The Maltese Falcon* (1941), Billy Wilder's *Double Indemnity* (1944), the screwball comedy *Talk of the Town* (1942), Fritz Lang's *Woman in the Window* (1945), and Abram Polansky's *Force of Evil* (1948) are just a few of the "classic" films, drawn from the same era as *Casablanca* and available for rental or purchase, offering suggestive legal texts. By showing sequences, rather than entire films, that highlight legal themes and by preparing students with handouts on story lines and the cast of essential characters, teachers can focus attention, even in a single class period, on specific legal issues. Similarly, selections from recent works on cinematic theory can be assigned in order to inform both initial viewing and subsequent discussions. Used creatively, films offer rich and flexible teaching tools for legal studies.

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Strickland, Rennard, "Bringing Bogie Out of the Courtroom Closet: Law and Lawyers in Film," 20 *The Gargoyle* (1990): 4 [the film contains no hints of this, but pre-shooting treatments gave Rick a pre-Casablanca career as a "famous criminal lawyer!"].

Symposium on "Legal Reelism: The Hollywood Film as Legal Text," 15 *Legal Studies Forum*, 1991.

Teaching Family Law: Growing Pains and All

by Susan Frelich Appleton

Family Law at the end of the twentieth century stands out as a field with no clear core or boundaries. It is experiencing what we might call in one of our friends a mid-life crisis, though the word "crisis" suggests not so much an emergency or calamity for Family Law, but rather an opportunity for growth, introspection, and maturity.

One reflection of modern Family Law's difficulty in finding itself emerges in the current requirement that students of the field familiarize themselves with three courses instead of one. First, Family Law continues to encompass a survey of numerous rules and procedures governing the family today – for example, restrictions on entry into marriage, divorce laws, mechanisms for responding to child abuse, and adoption procedures. Family Law – like its earlier incarnation, the Domestic Relations courses of decades past – remains a study of legal rules and procedures.

Second, by necessity Family Law includes a course in non-legal disciplines, especially history. Given the rapid rate of change in Family Law, today's law student or undergraduate will ultimately experience a significantly different legal environment than that existing during his or her training. To understand the current system of predominantly no-fault divorce laws, for example, one must become acquainted with the fault-based laws that preceded it; in order to understand where divorce reform will continue to go, one must learn where it has been. And beyond history, Family Law requires borrowing from many other disciplines now that sociologists have charted the changing nature of marriage, feminists have rethought our places in the family, psychologists have reported the effects on children of various custodial arrangements, economists have revealed the financial impact of no-fault divorce on women and children, and medicine has offered new "high-tech" approaches to human reproduction and its avoidance.

Third, thanks to the United States Supreme Court's insistence over the last quarter century that the Constitution limits state control of the family, Family Law must now also include a specialized course in constitutional law. Cases exemplifying this development cover a wide variety of family-related issues: the right to marry, the legal treatment of children born to unmarried parents, questions of reproductive self-determination, and parental autonomy in child-rearing, to name just a few. In such cases, the Supreme Court has identified a number of passionately debated questions about the extent of individual and family freedom and the power of the state to impose its own vision of a desirable social order, including the delineation of appropriate roles for males and females. In particular, the cases on "privacy" crystallize the current controversy about the scope of individual liberty to make personal and life-altering family choices, the role of the state in limiting such decisions directly or by financial incentives, the reliance on mainstream morality in developing such limits, the extent to which the Constitution requires "de-regulation" of the family, and the tension between family unit versus individual members of such units – all matters that pervade Family Law. With virtually every such case decided by what, up until now, has been a sharply divided Court (often with no majority opinion), "Constitutional Family Law" emphasizes the absence of a clear consensus on even the most fundamental aspects of the field. This absence of consensus plays itself out in all of Family Law, since, even in the non-constitutional segments of the course, divergent views have become a hallmark of judicial opinions, statutory approaches throughout the fifty states, and classroom discussions as well.

But anyone who examines Family Law more searchingly will see that its identity crisis comes not just from the dizzying array of subjects its teachers and students must master and its focus on controversial issues. On a more elementary level, the face of Family Law changes depending upon how we define and understand even its most basic terms. Most modern Family Law courses spend some time asking "what is a family?" – two lesbians with a long-term commitment to one another? a commune? a "surrogate" mother and the child she contracted to relinquish to an infertile couple? a man and the foster child placed in his care by the state? Indeed, the joinder of the two words that make the phrase "Family Law" presents something of an oxymoron, since our ordinary concept of the family suggests a sanctuary (or a private hell) that exists separate and apart from any legal regime. Other features distinguish Family Law as well: while most courses on "law" explore primarily the problems of men, in spite of modern efforts to bring gender equality to such inquiries, Family Law necessarily addresses problems of women and men; it requires no effort or "affirmative action" to examine cases with, say, female plaintiffs fifty percent of the time. And without scholarly tools such as a comprehensive "Restatement" from the American Law Institute to provide the stable and comfortable point of reference available in most courses, Family Law often finds irresistible sources like today's *New York Times* or the Phil Donahue Show to reveal the "cutting edge" of an issue that emerged too recently for inclusion in any of the more traditional authorities. Keeping up with reality provides an on-going challenge.

Hopefully, Family Law will never entirely grow up. Its chaos offers an excitement and sense of "becoming" that other fields of legal study cannot duplicate. And because Family Law – perhaps more than any other course – affects real people's lives in personal, tangible and deeply felt ways that students readily appreciate, it continuously reminds us, even in the classroom, that understanding the law entails far more than debating legal abstractions.

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The Family Goes To Court: Including Law in a Sociological Perspective on the Family

by Mary Ann Lamanna

As a family sociologist, I find a course on "Law, the Family, and Public Policy" to be an inevitable curricular development, growing out of recent changes in the family and its academic study.

Classical social theorists relied heavily on law in their interpretations of the family. But in the twentieth century, sociological attention shifted from the big picture, the family as a social institution, to microanalysis of internal family dynamics. Law seemed irrelevant.

Now the pendulum has swung again. Burgeoning historical scholarship on the family returned sociological interest to the family as an integral part of social structure. Emerging feminist perspectives pointed to the role of law in sustaining traditional family forms and gender roles, challenging the common sense notion of family life as a private realm. Rapid changes in domestic law and the visibility of state efforts to assist or regulate the family made family law a more exciting arena than it had seemed in the past. When Lenore Weitzman's book (1985) on the economic impact of no-fault divorce won several sociology prizes, the emerging interest of sociologists in family law received professional affirmation.

Students Encounter Family Law

The rising divorce rate, legal responses to child and spouse abuse, and other trends have brought the family lives of many students into contact with the law, and they are eager to learn about it. In my sociology courses on marriage and the family, law-related issues were most likely of all to stimulate lively class discussion. This student interest led me to develop an entire course on law, policy, and the family.

Other motivations attracted students. Some, particularly feminist women, minority students, gay students, or their political sympathizers, view law as a vehicle through which to pursue social change. Other students have a professional interest in the study of law and the family. My course has drawn a wide variety of undergraduate students and attracted graduate students in social work, psychology, criminal justice, public administration, education, gerontology, human development, nursing and nutrition, as well as sociology.

Teaching a Course on Law and the Family

Students at my urban university tend to be short on time and preparation for higher education. We have limited law resources, and the university law school is an hour away. Because I cannot realistically expect students to research law materials, I provide a very structured course, with lists of required and optional reading: cases, law journal articles, policy articles, and social science analysis.

The students have virtually no background in law — even the adversarial nature of the common law tradition is not always clearly understood, so the course needs to include an introduction to the American legal system (I cover this through lectures, but an excellent print source is a chapter by Woody and Mitchell in *The Law and the Practice of Human Services*). As students learn factually about law and the family, they also begin to acquire a sense of what law can do and what it cannot do: the limits of the law, as well as its scope and power.

I situate issues of law and policy sociohistorically. The legal impact of class, race, and other social distinctions is illustrated by some of the cases included in the course.

Every conceivable family law topic interests students, the esoteric as well as the ordinary (Phil Donohue has had his influence here!). One way of organizing these myriad law and policy issues is to employ the rubrics of structure-functional theory, with "structure" transformed into "relationship." This sociological perspective asks: who is in the family and what does the family do? Another theme is family autonomy versus legal scrutiny: how much social control is, and should be, exercised over the family through law?

The "Law, the Family, and Public Policy" course goes beyond the scope of law, narrowly defined, so as to include the legislative process, administrative regulation, and public and private sector program development. While those primarily concerned with undergraduate education in *law* might see these elements as just so much clutter, their inclusion permits a very important question to be addressed: what *is* the best way to develop and implement social policy? How do litigation, legislation, administrative regulation, and private sector programs compare as policy strategies? Once again, what are the strengths and limits of the law as a remedy for social problems?

Pedagogy

Texts include a sociological or legal source for an overview of family law (e.g., Krause, *Family Law in a Nutshell*) and a current policy book (e.g., Edelman, *Families in Peril*). Cases, journal articles, and advocacy pieces supplement the texts.

Varied political perspectives should be introduced. Ensuring that no single political outlook dominates readings and lectures can be difficult. But that is an important goal for a course that purports to provide a broad overview. Political pluralism is also pedagogically necessary to encourage students to articulate and reflect upon their views.

There is plenty of room for pedagogical improvement over my delivery of the course, for my teaching techniques are rather traditional: student presentation of cases and readings; class discussion; lecture; panels; guest speakers; and occasional audio-visual materials.

Most lacking was hands-on legal or policymaking experience. In the future I may require participation in a planned

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Bringing the Legal History of the Family into the Classroom

by Michael Grossberg

When John Adams declared in 1778 that the "foundation of national morality must be laid in private families," he voiced a widely-shared conviction about the intimate connection between American homes and the fate of the new republic. The future President's words suggest the importance invested in devising and applying laws for American families, and indeed those around the globe. As a result, legal history is strewn with telling examples of the complex relationship between law and the family. These can be brought into the classroom as revealing teaching tools that raise fundamental issues about the character of legal change as well as the changing nature of family life.

The legal history of the family, like other specific topics, blends commonalty with distinctiveness. It is at once a part of the larger legal history of this and other nations and at the same time a subject with its own particular past. This mix can be used by instructors to raise a variety of issues in a variety of formats. Several examples from American history illustrate the range of theoretical and topical issues that can be raised by bringing the legal history of the family into the classroom.

First, the legal history of the family forces a re-examination of existing ways of teaching legal history. Like other forms of social history, it can be used to help students re-examine common elements of the past from causation to periodization. For instance, American legal history remains dominated by causal models derived primarily from commercial conflicts that privilege the power of market ideology and capitalist enterprise. Yet looking at law and the family compels consideration of other causal factors in legal change, from the role of normative gender beliefs in the distribution of family wealth to the use of particular ethnic educational strategies in resisting compulsory education laws. In other words, examining the American household as a site for major conflicts of the past expands the causal variables at work in legal history, while at the same time suggesting a re-evaluation of the links between various forces of change.

The legal history of the family also can be used to add a new perspective to perennial causal issues such as individual and group agency. From the determination of countless antebellum mothers to fight for the custody of their children by entering the male world of local courts to the organized efforts of women to protect abortion as a constitutional right in the years after *Roe v. Wade* (1973), the law has been an arena in which lay individual and group agency has been a constant force. Exploring individual agency can be used to raise questions about the role of lay people in the creation of legal rules. Similarly, from the post-revolutionary creation of doctrines like common law marriage to the recent construction of no-fault divorce statutes, the legal history of the family contains countless examples of judges, lawyers, law writers, legislators, and other professionals orchestrating legal change.

Second, bringing the legal history of the family into the classroom can be used to explore particular themes from the rise of the administrative state to the persistence of rights talk. The continuing tension between autonomy and dependence is one example. Nineteenth century struggles between husbands and wives over the control of family property document the power of legal concepts like the Blackstonian ideal of marital unity (husband and wife are one, and that one is the husband) to structure relations in the home and contests outside of it, as well as to determine particular mixtures of power and subordination. Individual negotiations between spouses and changing common law and statutory powers can be used to examine how the law served as a vehicle for self-definition and a source of rights-consciousness in contests over married women's property and wages. Similarly, battles over abortion from the 1850s to the present reveal the complex and changing amalgam of gender beliefs, state regulatory authority, notions of privacy rights, and fears of family crisis that suffuse the legal history of the family at any particular time and over time.

Equally compelling are questions about the intersection of class, ethnicity and law to be found in the rules governing families in need, from Reconstruction apprenticeship statutes designed to re-enslave African-American children to post-World War II contests like *Goldberg v. Kelly* (1970) about the right to welfare entitlements. In each of these, and countless other examples, the legal history of the family has been a battleground in which family members, lawyers, judges, legislators, reformers, and countless others fought over the balance of autonomy and dependence in family law.

Autonomy and dependence, like many other topics, can also be pursued as an institutional issue. Since John Adams' time, states have had jurisdiction over the American family. But tensions between uniformity and localism constantly arose to challenge the autonomy of state authority and the balance of power between the center and the periphery. They burst out in episodes such as the successful federal crusade against Mormon polygamy and the failed late nineteenth century attempt to create a national divorce law. Federalism spawned such struggles, while regionalism and localism constantly fed the flames of conflict over issues from alimony to child abuse. And, of course, this contested past threatens to emerge once again if *Roe v. Wade* falls and abortion regulation devolves to the states. Whether on an individual or institutional level, the persistent tension between autonomy and dependence illustrates the fundamental issues that can be brought into the classroom with the legal history of the family.

The particular blend of commonalty and distinctiveness in the legal history of the family can be brought into the classroom in a variety of *formats*. Courses in family law can range from surveys that tell the story of the entire subject to period studies such as law and the colonial family. On the other hand,

selective topics in the history of law and the family can be melded into a variety of other courses, including surveys of American legal history, period courses, and specialized courses like women's history. In short, there are a number of ways to bring the legal history of the family into the classroom.

Course variety is possible because of the growing literature on the legal history of the family published during the last twenty years. Instructors can now turn to collected essays on the history of American family law, monographs that provide overviews of domestic relations law, specialized studies of particular subjects such as abortion or divorce, printed primary records, selections of primary documents, and sections of legal history survey texts. As a result, a wealth of material now exists for classroom use.

A call to bring the legal history of the family into the classroom may not have surprised John Adams. Yet he might well have been jolted by the contradictions, conflicts, and tensions of the subject itself, just as he was by Abigail Adams' now famous demand that he and other revolutionaries "remember the ladies." It is this combination of predictability and surprise that makes the legal history of the family such a compelling subject for the classroom.

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Family Law in Sociology

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courtwatch program. With access to a law library, one might institute a legal research requirement.

Another limitation of my course is its focus on American rather than comparative law. In that spirit I would urge the development of more and varied courses on law and the family. Whatever specific form it takes, a law and family course is satisfying, I would even say fun, to teach, and one which students seem to find exciting and meaningful.

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SFA/MAL/MG

[*Editor's Note: The following are excerpts from reports on the results of ABA Mini-Grants to colleges for 1990-91.*]

Law as a Social Tool — Preparing Students for the Year 2000: A Campus Seminar Series

As we head towards the 21st century, legal issues are becoming an increasingly common part of daily life. Every day Americans read and hear news reports about laws and legal theories that impact on the way they do business, attend school, interact with the environment, and socialize. Some of the foundations for these changes have existed for many years, but others are outcomes of modern technology and attitudes. Students and community members were involved in dialogues about these changes as the result of a mini-grant awarded to California State University.

It is often presumed that students in political science and criminal justice, for example, are the only students who need exposure to legal issues. Today, however, students in education need to understand the basis for laws providing education for all students and abilities. Students entering the business world need to comprehend fully the ethics and laws of business regulation, anti-trust rules and insider trading. Students in the behavioral sciences must master guidelines for ethical conduct in research and psychotherapy, as well as doctrines such as *patens patriae*.

The seminar series held at California State University, San Bernardino in 1990-91 was an example of how universities can and should expose all students, as well as community members, to legal ideas and their relationship to daily life experiences. Our featured speakers met with individual classes and faculty and also gave a general audience address. In choosing areas to present, we focused on topics in the local headlines of southern California; we recommend a similar approach at other universities to facilitate transfer of concepts, relevance and classroom use. We chose six topics: mass media and politics (scheduled prior to a controversial gubernatorial election), affirmative action, white collar crime, privacy rights (drug testing and abortion), children's rights (coinciding with the release of a report on the status of children in California), and environmental law.

Several themes emerged throughout the topics. First, what is the role of moral values in the passage and implementation of legislation and policies? Second, how is the public good balanced with private rights and individual choices? Third, what overriding concerns do policy-makers consider?

The general audience and discussion sessions were particularly effective. Faculty who attended the general session incorporated the points raised into their own courses. As a result, many of our colleagues are more aware of the impact of legal issues across the broad spectrum of university offerings.

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Integrating Issues of Law and Cultural Pluralism

The goal of a mini-grant award to the City University of New York's John Jay College was the development and dissemination of materials for problem-solving exercises, designed for use in undergraduate classes and faculty workshops. We developed legal cases that would enhance appreciation of, and sensitivity to, the complexity of issues of cultural pluralism, as these involve law and values within the context of solving real-life problems.

We developed five legal case studies, examining different aspects of the relationship among cultural pluralism, law and values in the U.S. In preparing these cases, we worked from trial transcripts, personal interviews with involved parties, in-house memoranda, court opinions, and newspaper items.

The five case studies are: (1) "A Wife Dies in Brooklyn: *New York State v. Chen*," involving the successful use of a cultural defense in a homicide trial in New York city; (2) "The American Muslim Prison Case," raising the question of whether a prisoner can successfully invoke his religion to bar a pat frisk by a female corrections officer in a maximum security prison; (3) "The Use of Drugs in Religious Ritual," comparing *People v. Woody*, in which Native Americans claimed the right to use peyote in their religious ritual, and *Town v. State*, where American members of the Ethiopian Zion Coptic Church fought for the right to use marijuana in their religious services; (4) "The Exclusion of ROTC from Campus," based on events on our own campus involving the claim by homosexuals that since ROTC, like the Army, refuses to admit homosexuals, it violates the university's anti-discrimination policy, and should be removed from campus; and (5) "The Controversy over Reburial of the Remains of Native Hawaiians," demonstrating how a controversy can be solved politically through the passage of a law.

Our procedure typically entailed dividing participants into groups of four or five, and allowing them 25 minutes to read and discuss a case and to come to a conclusion about how the case should be decided and their reasoning. During this period, we circulated among the groups answering any questions. At the end of the period, each group reported back to the other participants. Time permitting, we encouraged the groups to question one another, where their decisions or reasoning differed. We allowed ourselves 5-10 minutes to sum up the issues raised.

We conducted workshops and/or class demonstrations utilizing these exercises at Middlesex (NJ) Community College, Miami-Dade Community College, the annual meetings of the Society for Applied Anthropology and the American Political Science Association, and an NEH Summer Seminar on the Politics of Culture. Responses were overwhelmingly positive, even in large-class settings. What is most impressive to faculty who participate in the workshops *with* students is the incontrovertible evidence that students can, and will, have enthusiastic and high level responses to materials which engage them in small group discussion.

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Court TV: What Value for the Classroom?

by Joshua Lazerson

These surely must be the days of abundance for *Court TV*, the recently inaugurated cable television channel dedicated to coverage of court cases across the United States. The William Kennedy Smith rape trial from Florida, the grisly details of the Dahmer multiple murder from Milwaukee, the Mike Tyson rape trial in Indianapolis, the New Jersey police shooting of a 16 year old youth, the Broderick trial and sentencing in San Diego, with its spousal brutality and multiple murder: a veritable cornucopia of human horrors. And if this courtroom drama were not sufficient in geographical scope or technicolor detail, *Court TV* offered live coverage of the Thomas/Hill nomination fiasco as well.

What to make of this new television phenomenon? Is it the late twentieth century moral equivalent of Roman coliseum fare, or is it of potential interest and value to the instructor of law-related courses? There is something here for instructors, the channel's inherent value compounded by the very fact that the cases televised are the most notorious going, closely followed by the public, and quite likely to incite student interest. However, it is difficult to discuss the pedagogical value of this new offering without shading into a discussion of its socio-cultural ramifications, of what it reflects about us, its viewing public.

First, the facts of the case. *Court TV*, where available, is accessed as part of one's basic cable service: it is a "free" channel, operating on a continuous broadcasting schedule. When live coverage is not available, the channel broadcasts highlights of continuing trials, updates on verdicts in prominent cases, commentary and discussion from its stable of in-house and external experts, and other legal programming. Today, a Sunday, the channel was broadcasting one in a series of continuing legal education seminars, this particular offering a session on constitutional law hosted by three scholars. But this is not the channel's prime time. *Court TV*, one would expect, will rise or fall on the strength of its raw material, the courtroom drama provided by the interplay of defense, prosecution and witnesses in bringing to light the wrongs humans do unto one another.

This is not to diminish the channel's infrastructure. *Court TV*'s hosts and core commentators, including Fred Graham and Gregg Jarrett, are capable interviewers and knowledgeable commentators. External discussants, defense attorneys, state prosecutors and former judges, and forensic, medical and psychological experts, discuss fine points of law and legal process: What is discovery? How does one define reasonable doubt? What is the burden of proof and upon whom does it fall, and when? What are the purposes of a judge's instructions?

The beauty of this commentary is much the same as that theoretical value gleaned by the uneducated fan from Monday Night Football in the A.H.C. (after Howard Cosell) period: its immediacy. The commentators not only define aspects of law and legal process, they do so in the "midst of the game." In this way, law comes to life; it becomes a living, breathing matter of debate and argument and human judgment bolstered by the edifice of that which has come before. And that, succinctly put, can be very interesting.

Court TV, as it attempts to represent courtroom realities, exhibits concomitant frailties. Trials take time. And much of that time is spent in the process of construction, of repetition and, to the layperson, legalistic minutiae. For this reason, the instructor is undoubtedly going to want a VCR with a working counter to move through the irrelevancies in both courtroom and commentary, choosing the programming relevant to any given class.

Court TV has its quirks (probably some will see the package as a holistic exercise in the odd). The channel advertises itself as "An idea as old as America." Little did we know the founding brethren were such technological visionaries! An advertisement for the Stephen King library runs between the testimony of the two detectives who interviewed Jeffrey Dahmer for 60 hours (an ironic and possibly telling placement certainly not lost on the station's programmers), and who share with the courtroom the most twisted details of his murder spree. The correspondent covering the Tyson trial in Indianapolis, a journalist for Sports Illustrated, attempts to describe the atmosphere in the courtroom and the jury's reaction to the defendant's testimony after having watched that testimony on a television herself in the courtroom basement.

Watching *Court TV* for a protracted period of time is much like chewing gum: the first time we do it, we notice that the flavor is lost quickly. The chewer who has some intrinsic interest in the physical product itself is likelier to gain satisfaction from it in the long run. Most viewers will find this true of the new channel. Even with the most horrific crimes as a basis, the novelty of being inside a courtroom, of casting one's gaze upon the accused and accuser, of witnessing real human interaction and emotion through television's one-way mirror, will wear off quickly.

Hannah Arendt wrote of the "banality of evil," and *Court TV*'s recent procession of cases serves to bolster her observation. But for those who are looking for more than titillation, the channel has potential. The nuts and bolts of law are here: *Court TV* is at least capable of demystification. With the guidance of a knowledgeable instructor, and with cases that highlight issues of import, judicial, social, political or otherwise, *Court TV* may have value in the classroom.

The great paradox of *Court TV* is that, given the conscious nature of the cases chosen for broadcast, the packaging of those cases and the use of normal television devices to build tension around them, *Court TV* is not *L.A. Law* or *Law and Order*. *Court TV* guarantees no neat endings, no resolution of difficult legal or moral questions between the beginnings and ends of hours. The fact that these questions are raised on *Court TV* suggests the potential value of the medium in increasing student understanding of law and the legal process.

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Racism and Justice: The Case for Affirmative Action
by Gertrude Ezorsky
Ithaca: Cornell University Press, 1991.
136 pp., $21.95 (cloth); $6.95 (paper).

Affirmative Action at Work: Law, Politics, and Ethics
by Bron Raymond Taylor
Pittsburgh: University of Pittsburgh Press, 1991. 251 pp., $29.95 (cloth); $14.95 (paper).

Reviewed by Donna Harshaw Albro

During the last three semesters, the Introduction to the Social Sciences classes at Alverno College have ended with an in-class debate about the pros and cons of affirmative action. The student debates are the last of a week-long series of activities in which students have read several articles discussing affirmative action as a public policy that attempts to redress social inequality; listened to an instructor's presentation on affirmative action; and viewed the *Frontline* videotape, "Assault on Affirmative Action." Trying to find a single resource for classroom use that explains the complexity of affirmative action and its nuances was difficult, until the publication of *Racism and Justice: The Case for Affirmative Action*. Gertrude Ezorsky has written an excellent book ideally suited for exploring, in introductory classes, this continuing public policy debate in American society.

Racism and Justice is a short (136 pp.), concise and readable account of the history of affirmative action in the United States. It offers introductory students clear definitions of social scientific concepts that they must comprehend to understand the complex debates surrounding affirmative action. It provides historical context for which students born after the 1960's civil rights period may have little awareness. Ezorsky's book also provides students with a perspective frequently not addressed in the political climate of the 1990s.

Supported by the current work of social scientists, Ezorsky reminds us "that despite progress, attitudes of racism are still widespread." Among other evidence, she cites a 1991 Urban Institute report that published the results of an investigation of overt race discrimination in employment. The report showed "widespread" and "pervasive" race discrimination against young black males. Students of the 1990's who believe that race is not a continuing factor in American society will be forced to reconsider this perspective after reading *Racism and Justice*.

Ezorsky further maintains that, whether overt or institutional, racism must still be combatted and additional remedies provided for its eradication in American society. She discusses the current remedies utilized and then proceeds to suggest modifications and possible alternatives that would facilitate a greater acceptance of those remedies among the individuals so affected.

Ezorsky is cognizant of the criticisms levelled at affirmative action. She provides succinct descriptions of those criticisms and suggests a multiplicity of moral perspectives about why affirmative action is still warranted. Students will be able to draw their own conclusions and support them by the variety of evidence contained within Ezorsky's work.

In sum, *Racism and Justice* is appropriate for a myriad of courses within the curriculum that could benefit from a concise, well-documented and balanced illustration of a public policy issue that is sure to remain in the forefront of American political and social debate in the years to come.

In contrast, *Affirmative Action at Work: Law, Politics and Ethics* by Bron Raymond Taylor is an excellent example of empirical research. This interdisciplinary study combines empirical and normative approaches to help the reader understand not only the political, but also the social, moral and ethical implications of affirmative action. Taylor illustrates comprehensively how affirmative action is perceived within the workplace among employees.

One potential drawback to this work, in the context of undergraduate teaching, is Taylor's ethical analytical framework: only advanced students will be able to identify with and understand it. Within this framework, Taylor clarifies the relationship between the principles of distributive justice and the ethical debates about affirmative action. He illustrates what ethical debates about affirmative action have to do with distributive justice, and explains how normative ethical theory can be applied to affirmative action through four basic approaches: justice as freedom, justice as fairness, justice as productive freedom, and justice as the greatest good. He then analyzes these approaches by examining the normative ethical theory of a major figure within each approach and examines how contemporary theorists utilizing each approach apply such theories to affirmative action.

Utilizing the work of these four normative ethical theorists, with particular attention to their perspectives on affirmative action, Taylor analyzes the attitudes of California Department of Parks and Recreation employees with reference to affirmative action. His research addresses and answers the question: "Why do people feel about affirmative action as they do, and what sorts of moral reasoning influence their views on the subject?"

Students who have completed work in philosophy, social policy and theory, research methods, and survey research would enjoy *Affirmative Action at Work*. Taylor's book provides a good example of applied social science research utilizing qualitative and quantitative research methods.

Donna Harshaw Albro recently became Director of Affirmative Action at Lane Community College, 4000 E. 30th Street, Eugene, OR 97405-0640, after having taught in the social sciences division at Alverno College.

Crimes of Passion: Dramas of Private Life in Nineteenth-Century France
by Joelle Guillais; Jane Dunnett, trans.
New York: Routledge, 1990. 248 pp., $35 (cloth).

Reviewed by Jean Elisabeth Pedersen

Thanks to the translation of Jane Dunnett, American scholars, teachers, and students can now read Joelle Guillais' work on French crimes of passion in English. Drawing on her research in the archives of the *department de la Seine*, Guillais uses a series of stories about these crimes as a window into working-class culture in Paris from 1871-1880. Guillais' three sections start with a statistical analysis of the number of crimes and kinds of criminals at the time, continues with an investigation into the nature of the relationships between the men and women involved in crimes of passion, and ends with a discussion of how the larger French society viewed these crimes and what happened when the criminals came to trial. The book is full of incredible stories based on a wide variety of primary sources: love letters, diaries, newspaper editorials, trial records. By quoting liberally from these documents, Guillais allows her historical actors to speak directly, and often compellingly, to us across the century which separates our world from theirs.

Guillais skillfully uses these episodes to make a number of larger points about crime in general and nineteenth century Parisian culture in particular. We think of the crime of passion as a spontaneous act, the violent conclusion to a suddenly discovered love affair. Guillais shows us that the reality of violent crime within couples was far more complex. Only 20% of the 735 domestic crimes committed in France between 1871 and 1880 were justified by adultery. Almost half were a result of "quarrels between husband and wife" over other issues; the remaining 34%, of similar quarrels among unmarried couples (pp. 21-22). Guillais also shows that crimes of passion were often premeditated.

By examining the cases of the 89 men tried in Paris for committing crimes of passion during this period, Guillais shows that their crimes were not simply isolated acts of jealousy, but a systemic part of a world in which alcoholism, poverty, unemployment, and uncertainty contributed to the strain of everyday life. Nineteenth century criminologists and social observers treated crimes of passion as exceptional examples of working-class barbarism. Guillais, however, sees them as "acts of rebellion" in which men misdirected their anger at social injustice onto the bodies of the women closest to them.

Most French social commentators saw the larger number of working-class crimes of passion as further proof both of the superiority of bourgeois morality and of the dangerous nature of the urban poor. One of the strengths of Guillais' analysis is the way in which she uncovers the differences between the causes and consequences of middle-class and working-class marriage to put this contrast into a new light. For members of the French *bourgeoisie*, marriage was a financial matter, planned in advance for its economic advantages. A husband might mistrust or dislike his wife, but unless her behavior endangered his prosperity he was unlikely to risk even the scandal of separation, let alone of murder. If her behavior became unbearable, he might use his legal authority to quietly institutionalize her.

For the Paris working-class, on the other hand, Guillais shows that marriage was a far more casual matter. Without much money to worry about, men and women often moved in together without a legal ceremony. Similarly, once married, if they ceased to get along, they often moved into separate households without filing for a legal separation. In fact, working husbands often killed their wives, not because they had taken lovers, but because they had moved out unexpectedly. Where middle-class family honor required that marital difficulties remain secret, working-class masculine honor required that a husband take dramatic measures to keep his wife in line. Guillais points out that this attitude was justified by the French legal system, which required a wife to live with her husband and acquitted a man of murder if he killed his wife for adultery.

Guillais argues that the women she discusses achieved a certain degree of happiness and autonomy despite their legal disadvantages. She praises their "endeavours to be independent . . . their potential energy to survive and to enjoy life . . . their tenacious resistance to different forms of oppression" (p. 127). This is the one part of her otherwise insightful analysis with which I disagree. Her stories certainly show women who have broken with the nineteenth century stereotype of feminine domesticity. Guillais' urban women not only go to and from work in Paris every day, but also initiate sexual relationships as they please and walk out on their husbands when dissatisfied with their marriages. However, while I agree with Guillais' stress on the energy and the agency of these women, they are present in her study only because they ended their lives in violent death at the hands of irate lovers and husbands who were acquitted by the law.

Despite this reservation, I recommend *Crimes of Passion* to anyone who is teaching or studying legal history, comparative criminal justice, or, more broadly, urban culture, the history of women, or the working of gender in society.

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Briefer Book Notes

An Introduction to Constitutional Interpretation: Cases in Law and Religion
by Lief Carter
New York: Longman, 1991. 154 pp., $18.25 (paper).

This is an intriguing and quite distinctive book, which can serve as an excellent supplement to the standard constitutional law casebook. Carter achieves at least three purposes here, including providing undergraduates with (1) perspectives on constitutional interpretation, (2) broad-ranging philosophical and policy discussions on the role of religion in American life, and (3) an approach to law and appellate cases firmly rooted in the liberal arts, not technical legal reasoning.

Several cases are included with only limited editing [*Goldman v. Weinberger*, 1986; *Edwards v. Aguillard*, 1987; *Oregon v. Smith*, 1990]. The distinctive core of the book, however, consists of the surrounding discussion that places these and other cases in much broader context, the frequent dialogues between hypothetical students of opposing view-

points, chapter summaries, and bibliographic notes. The writing is unusually straightforward and literate, which should enhance students' interest and active involvement in learning about constitutional law.

Popular Trials: Rhetoric, Mass Media, and the Law
Edited by Robert Hariman
Tuscaloosa, AL: The University of Alabama Press, 1990. 268 pp., $32.95 (cloth).

Popular Trials: Rhetoric, Mass Media, and the Law is a collection of nine essays, informed by a desire to explore the relationship between various foci of power: the courtroom, the media, and rhetoric in the context of both. The courtroom is a site of power manifest in the judge's ability to interpret the law and to control discourse therein. There is power incarnate in the media, with its propensity for utilizing the "histories" it, itself, generates to explain the context of any given trial, and its often unabashed rhetorical excesses in headline and text. And there is the power of rhetoric itself, harnessed by prosecution or defense, judge or media, to define the presence or absence, nature and scope of the issues at hand.

The trial of the Chicago Seven, the Scopes trial, and the John Hinckley trial are among those discussed, each at some length, in the work. These trials, immediately recognizable in the context of their historical import or contemporary interest, are sure to elicit student response. Robert Hariman has edited an indispensable addition to the study of rhetoric and law; chapters from which could be used profitably in upper-division courses examining the intersection of law and rhetoric, communications or journalism.

Resources

Understanding the Courts. The American Bar Association's Commission on Public Understanding About the Law has produced two new videos, *Anatomy of a Criminal Case* and *Anatomy of a Civil Case*. These videos, 18 minutes and 17 minutes respectively, were designed to shed some light on the legal system by illustrating the judicial process and its constitutional premises. The *Criminal Procedure* video discusses and illustrates aspects of criminal trial process including arraignment, discovery, jury selection and verdict. The *Civil Procedure* video covers such aspects of civil cases as the filing of a complaint, pre-trial settlement and pre-trial motions, opening statements, direct and cross-examination, and jury deliberation. The package, including the two videos, viewers' and facilitators' guides, is $25.00. To order, contact ABA Order Fulfillment at 312/988-5555.

1992 Dispute Resolution Program Directory. The ABA's Standing Committee on Dispute Resolution has published a program directory listing mediation, conciliation and arbitration programs alphabetically and state-by-state. There is a brief description of each program, its history, types of cases handled, program procedures, staff and training, and phone numbers and addresses for each listing. There are also international listings, corporate alternatives, better business bureaus, and a list of those providing technical assistance. To order, contact ABA Order Fulfillment at 312/988-5555.

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Teaching about Law in the Undergraduate Curriculum: The Contribution of Political Science. [published in the APSA's *Law, Courts and Judicial Process Section Newsletter*, Summer, 1985, pp. 1-5]. No charge.

Law, Liberal Education and the Undergraduate Curriculum. [published in *Legal Studies Forum*, Vol. 10, No. 1, 1986]. Reprints available. No charge.

Undergraduate Programs of Legal Studies, Law and Society, etc.: Overview and Tabular Summary. 1986; updated, 1988. No charge.

To order, or for information, write Joshua Lazerson, ABA Commission on College and University Nonprofessional Legal Studies, 541 N. Fairbanks Ct., Chicago, IL 60611-3314; or call 312/988-5736.

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